

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 CHEVRON SHIPPING COMPANY)
 (CHEVRON TRANSPORTER),)
5 Appellant,)
6 v.)
 PUGET SOUND AIR POLLUTION)
 CONTROL AGENCY,)
8 Respondent.)
9 _____)

PCHB No. 550

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

10
11 A formal hearing on the appeal of Chevron Shipping Company to a
12 notice of civil penalty of \$250.00 for an alleged smoke emission
13 violation came on before Board member W. A. Gissberg on July 23, 1974
14 in Seattle, Washington.

15 Appellant appeared by and through its attorney, Gary Linden;
16 respondent appeared through its attorney, Keith D. McGoffin.

17 Having reviewed the transcript of the testimony and the exhibits
18 and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

The ship, CHEVRON TRANSPORTER, is owned by Chevron Shipping Company, appellant. Early in January, 1974, the ship was placed in the Lockheed Shipyard in Seattle, Washington for boiler repairs. About five days before its departure from that facility, an employee of Bailey Meter Co. performed servicing on the ship's combustion controls, which servicing was preliminary adjustments and not those of a final nature which can only properly be done after the boiler is at a full head of steam. Proceeding by tug to Elliott Bay, the ship under its own power proceeded with a compass adjustment and then onto Point Wells for bunkering at the Chevron terminal. During its maneuvering in the Bay the vessel did emit smoke but of a density and for a duration not shown by the evidence. The captain of the ship, however, did know of the smoke condition. He was unable to notify the Chevron coordinator at Point Wells of the difficulty because of his and the ship's inability to communicate such fact.

II.

Responding to a citizen's complaint received by the respondent about 4:00 p.m., respondent's inspector at 4:47 p.m. on February 14, 1974, observed a black smoke plume being emitted from the stack of the ship while maneuvering to its berth. At about the same time, the employee of Bailey Meter Co. appeared on the scene to make the final adjustments for the combustion control system. The smoke emission from the ship was for eight and one-half minutes and was of a shade darker than No. 2 on the Ringelmann Chart, namely, varying from a

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 Ringelmann No. 2-1/2 to 5.

2 III.

3 As a result of the emission observation incident, respondent
4 caused its notice of violation to be served upon appellant and
5 subsequently issued its Notice of Civil Penalty No. 1431 in the sum of
6 of \$250.00, which is the subject of this appeal.

7 IV.

8 Section 9.03(a)(1) of respondent's Regulation I makes it unlawful
9 to cause or allow the emission of an air contaminant darker in shade
10 than No. 2 on the Ringelmann Chart for more than three minutes in any
11 one hour.

12 V.

13 Section 9.16 of respondent's Regulation I, under certain
14 circumstances excuses what would otherwise be a violation of
15 respondent's smoke emission regulations when the emissions are "a direct
16 result of start-ups, periodic shutdown, or unavoidable and unforeseeable
17 failure or breakdown." Section 9.16 excuses what would otherwise be
18 a violation if certain requirements stated therein are met, i.e.,

19 ". . . (1) The owner or operator of such process or equipment
20 shall immediately notify the Agency of such occurrence,
21 together with the pertinent facts relating thereto regarding
nature of problem as well as time, date, duration and
anticipated influence on emissions from the source."

22 Respondent received no such report from appellant because of the
23 inability of the ship to immediately communicate with the shore.

24 VI.

25 Respondent did not introduce any evidence of its issuance to
appellant of any prior notices of violation of its regulation.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, we presume that there were no prior violations on the part
2 of appellant.

3 VII.

4 Any Conclusion of Law hereinafter deemed to be a Finding of Fact
5 is herewith adopted as same.

6 From these Findings, the Federal Control Hearings Board comes
7 to these

8 CONCLUSIONS OF LAW

9 I.

10 Appellant contends that Section 9.16 of respondent's Regulation I
11 must be construed so as to give the owner or operator of the emission-
12 causing equipment a reasonable time within which to notify the Agency
13 of such occurrence. However, the plain and unambiguous language of
14 Section 9.16 requires that the Agency be "immediately" notified.
15 Appellant, therefore, was in violation of Section 9.03(a)(1) of
16 respondent's Regulation I, appellant not having offered any evidence
17 to show that the captain of the ship had made any effort whatsoever
18 to communicate a report of the excessive emissions to respondent.

19 II.

20 Having had no previous violations of respondent's Regulation I,
21 the imposition of the maximum allowable civil penalty seems to this
22 Board to be excessive, but a civil penalty in the amount of \$100.00
23 appears to be reasonable under the circumstances.

24 III.

25 Any Finding of Fact which should be deemed a Conclusion of Law
is hereby adopted as such.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The amount of the civil penalty is reduced to \$100.00.

4 DONE at Lacey, Washington this 13th day of August, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward

7 WALT WOODWARD, Chairman

8 W. A. Gissberg

9 W. A. GISSBERG, Member

10
11 CHRIS SMITH, Member

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER